AGN. NO.

MOTION BY MAYOR MICHAEL D. ANTONOVICH AND
SUPERVISOR ZEV YAROSLAVSKY APRIL 19, 2011

**RELATED TO ITEM #71**
**TRIAL COURT FUNDING - MINORS' COUNSEL**

On June 22, 2009, the Board directed the Chief Executive Officer (CEO) to transfer $14.4 million of the Trial Court Operations (TCO) Budget into the Provisional Financing Uses until the Board received an audit report on the projected over-expenditure in the TCO. The funds were transferred back into the TCO subsequent to the Board's receipt and review of the audit report.

The audit report, issued on June 15, 2010, focused on criminal cases, expert witnesses and Family Law matters because together they comprise approximately 70% of the total indigent defense costs. With respect to Family Law, the audit revealed that minors' counsel accounts for approximately 85% of the total Family Law expenditures. The audit also showed that the use of court-appointed attorneys for Family Law matters had increased by 76% between fiscal year 2006-2007 and 2008-2009. One of the explanations for the direct increase in the use of minors' counsel was the result of California Rules of Court 5.240 which raised awareness of the bench and the bar to the availability of this program as a tool.

Prior to the 1997 shift of the trial court funding to the State, the County's cost for minors' counsel was approximately $1.5 million. In fiscal year 2009-2010, those costs had jumped to $5.7 million. Through cost containing measures, implemented by the Superior Court, the projected cost for minors' counsel for the current fiscal year is approximately $3.8 million. According to a memorandum issued by the Supervising Judge of Family Law to the CEO's office, dated October 14, 2010, the Court may order

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MOTION

MOLINA ______________________________

RIDLEY-THOMAS ______________________________

YAROSLAVSKY ______________________________

KNABE ______________________________

ANTONOVICH ______________________________ the parties to reimburse all or a portion of these costs to the County if it is later determined that they have the ability to do so. However, per the audit, the Court does not regularly perform subsequent evaluations of the parties' ability to pay.

Additionally, according to County Counsel, there is a conflict in the law because when the Legislature enacted Government Code Sections 77200 and 77201, it transferred "court operations" (which includes court-appointed counsel for these matters) to the State; however, it did not repeal Family Code Section 3153(b) which placed this obligation on the County. This has caused inconsistencies Statewide. In fact, according to the CEO's report, dated September 20, 2010, many courts in other jurisdictions, "… do not provide this service and have indicated that they refer individuals to non-profits or self-help centers." Some courts, such as the San Diego Superior Court, fund minors' counsel costs directly from their own budget.

Finally, the County did not include this expense in the annual Maintenance of Effort (MOE) payments to the State which would have capped it at the base year amount of $1.5 million. County Counsel, the CEO and the Auditor-Controller suggest exploring revisiting the MOE and seeking legislative clean-up of the conflicting laws. However, given the complexities involved in revisiting the MOE after 14 years, the unknown results of those efforts, and the ongoing fiscal impact of this program on the County's general fund, it is prudent for the Board to have additional recommendations and options for consideration.

**WE, THEREFORE, MOVE** that the Board of Supervisors move the CEO's report and direct:

1. The CEO to work with County Counsel and the Auditor-Controller, in consultation with the Los Angeles Superior Court, to report back in one month with additional options and recommendations relative to the County's expenditures for minors' counsel in Family Law Court, including, but not limited to, ways to reduce this cost further, including a flat fee per case, as well as ways to modify and leverage other existing resources to meet this obligation;

2. The Auditor-Controller work with the Superior Court to review the financial screening process used by the Court and determine whether other enhancements or improvements can be implemented to maximize reimbursement opportunities; and

3. The CEO to transfer $3.8 million into the Provisional Financing Uses until the Board's receipt and review of the above-referenced report.

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MDA:apc